IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11744 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DIST.DEVEOPMENT OFFICER & 2 - Petitioner(s)
Versus
THE SECRETARY & 1 - Respondent(s)

==========

Appearance :
MR PRANAV V SHAH for Petitioner(s) : 1 - 3.
NOTICE SERVED for Respondent(s) : 1 - 2.
MR TR MISHRA for Respondent(s) : 2,
MR UT MISHRA for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 27/07/2006

ORAL JUDGMENT

Heard learned Advocate Mr. Pranav V. Shah for petitioner and Mr. T.R. Mishra for the respondent workman. In this petition under Article 227 of the

constitution of India, the petitioner DDO, District Panchayat, Bhavnagar has challenged the award made by the labour court Bhavnagar in Reference ((LDC) No. 31 of 1998 dated 20th March, 2006 wherein the labour court has partly allowed the reference and granted benefit of permanency after completion of the period of three years from the date of joining to respondent workman as a peon and granted difference of salary, allowance and other benefits with effect from 3.8.1998. Labour court has also directed that the period from 2.4.91 to 3.8.98 should be considered as notional and respondent will not be entitled for any amount of arrears for said interim period but for the purpose of seniority, promotion, increments and retirements, full time employment from 2.4.1991 should have to be taken into account. Under the said award, labour court has awarded cost of Rs.500.00. Learned Advocate Mr. Shah submitted that the labour court has committed error in granting benefit of permanency to the workman. He also submitted that the Government Circular dated 26.12.1980 has been kept in abeyance by the Government vide Government Circular dated 21.8.1995. Government Circular dated 21.8.95

has been placed on record before the labour court vide Exh. 26/A but the labour court has not considered the same while considering the matter and has therefore erred in granting benefit in favour of the respondent workman contrary to the Government Circular dated 21.8.1995. It was also his submission that the labour court has erred in not appreciating the evidence produced by the petitioner in directing the petitioner to regularise services of workman as full time employee though the respondent was not recruited under the procedure or service rules framed by the petitioner. He submitted that the respondent was working as a part time peon and no post was vacant in the set up, therefore, labour court has erred in granting benefits. He relied upon the decision of the Larger Bench of the Apex Court in Secretary, State of Karnataka versus Umadevi and others, reported in 2006 (4) SCC page 1. Except these submissions, no other submission was made by learned Advocate Mr.Shah. Except the decision in case of Secretary, State of Karnataka versus Umadevi and others,(supra), no other decision was cited by him before this court.

On the other hand, learned advocate Mr. Mishra while opposing the petition and supporting the award in question, submitted that the labour court was right in appreciating the evidence on record and there is no contrary finding given by the labour court. According to him, the petitioner has not been able to point out as to how the findings recorded by labour court are perverse or contrary to the evidence on record and therefore, this court is having very limited jurisdiction under Article 227 of the Constitution of India and this court cannot reappreciate the evidence appreciated by the labour court. It was also his submission that this court cannot act as an appellate authority. Learned advocate Mr.Mishra submitted that the respondent was working from 2nd April, 1988. He continued in service with the petitioner but the respondent remained as part time and his services were not regularized by petitioner and, therefore, this aspect has been rightly appreciated and considered by the labour court and, therefore, labour court was right in granting benefits after appreciating the evidence of

witness for petitioner. He emphasized that the witness of the petitioner Shri Pragji Ravji was examined before the labour court at Exh. 24. He admits in clear terms that at present two posts in set up are vacant, one is the post of Doctor and one of peon are vacant and considering the oral evidence of the witness for petitioner at Exh. 24, labour court directed petitioner to regularize the service of workman on the post of peon w.e.f. 2.4.91. Therefore, according to him, labour court has not committed any error warranting interference of this court in exercise of the powers under Art. 227 of the Constitution.

I have considered the submissions made by the learned Advocates for the parties. I have perused award in question made by the labour court, Bhavnagar. I have also perused other annexures annexed to the memo of this petition, namely Circular dated 26.12.80, 14.3.88, statement of claim, circular dated 21.8.95 and the written statement filed by petitioner before the labour court.

Written statement was filed by the petitioner before the labour court on 11.9.2001. In paragraph 10 of the said written statement, petitioner made averment that no permanent post is vacant with the petitioner at Dhasa. Dispute was referred to for adjudication on 3.8.1998. Statement of claim was filed at Exh. 4. According to the statement of claim, workman was working in the Animal Dispensary at Dhasa in the post of peon and dresser. However, he was considered to be part time employee though he was remaining in service for more than ten years. His services were not regularized by the petitioner and, therefore,dispute was raised on the basis of the Govt. Circular dated 26.12.80 that after completion of three years period as a part time employee, he may be confirmed on the post of peon or dresser as a full time employee.

In its written statement filed by petitioner at Exh. 11 before the labour court, it was contended by the petitioner that till the permanent post of peon is not filled up by the establishment section of the district panchayat in the animal dispensary started

at Dhasa, sanction was given for engaging one part time workman for serving water, sweeping etc. work for five hours a day, at the rate of Rs.47.50 per hour and in view of that, the workman was engaged as such and, therefore, respondent was not appointed after following due process of recruitment rules and payment was made on the contingency bill and, therefore, the respondent is not entitled for the benefit of permanency with the petitioner. Before the labour court, respondent workman was examined at Exh.14 and certain documents were produced by both the parties and one witness Pragji Ravjibhai Golakia for petitioner was examined at Exh.24. Thereafter, the labour court framed issue as to whether the workman is entitled for the benefit of full time employee or not. Labour court considered the evidence of workman at Exh.14. In evidence of respondent workman, it was stated that the timing of dispensary in morning wa from 7.00 a.m. to 11.00 a.m. And in after noon from 4.00 p.m. to 7.00 p.m. He was accordingly working as per these timings of the dispensary and there is no difference in nature of work between permanent and part time employees. He

was working in the dispensary for whole time from 7.00 a.m. To 11.00 a.m. And 4.00 p.m. To 7.00 p.m.. Nature of work is perennial. Therefore, if he is considered to be full time employee,then, he would be entitled for the salary of Rs.4200.00 but at the time of his deposition, he was getting Rs.750.00 per month for five hours work. In his cross examinatin, he admitted that he has to work as sweeper in dispensary with other miscellaneous works including the work of dressing and peon for the entire period. He also deposed that except him, there is no any other person as a peon in the dispensary. Witness for petitioner Pragji Ravjibhai Golakia at Exh.24 admitted that at Dhasa, new dispensary was opened by petitioner and right from the opening of the said dispensary, respondent was working for doing five hours job as a part time employee. At Dhasa Dispensary, one post of doctor and one post of peon, two posts in all, are in set up and both the posts are vacant. As per his deposition, Doctor from Gadhda Dispensary was coming at Dhasa Dispensary for two days in a week and the post of Doctor is vacant at Dhasa Dispensary from 1999 but

upto 1999, regular Doctor was available at Dhasa Dispensary. In Dhasa Dispensary, in case of sickness of an animal, treatment has been given in the dispensary including the dressing and operation of animal concerned and thereafter work of sweeping of dispensary and to remain present in the dispensary till Doctor visits dispensary and to remain at the dispensary till the doctor remained present in the dispensary. Thus, the respondent has to keep him present in the dispensary even when the doctor is not visiting the place at Dhasa and during the course of visit of doctor also, he has to keep himself present in the dispensary at Dhasa. In Dhasa Dispenary, post of peon is vacant since the opening of the dispensary. In Dhasa Dispensary, no permanent peon has been appointed by the petitioner. Post of peon and Safai Kamdar both are class IV posts and pay scale are same for both the posts. Services of workman were not terminated from the date of opening of the Dispensary at Dhasa. Whenever doctor is not available, at Dhasa Dispensary, rspondent workman has to remain prsent, he has to open the dispensary and he has to close the dispensary after completion of

the working hours. How many hours respondent was working and what type of work has been taken from him, he was not aware about the same but it should have to be known to the doctor. Respondent was also doing the work of dressing along with the doctor. He also admitted that at the time of recruitment in the post of peon, part time or daily rated employees are being considered by the petitioner for regularizing their services.

After considering the oral and documentary evidence on record, the labour court has come to the conclusion that the entire dispensary was handled by the workman in absence of doctor. It is not in dispute that the post of doctor and peon in set up are vacant. Even though the respondent workman remained in service and worked with the petitioner in morning four hours and evening two and half hours continuously which covers six and half hours and maning thereby, it amounts to full time working done by the respondent. Labour court has analysed, scrutinized and appreciated the oral evidence of both the witness and came to the conclusion that the

nature of work performed by the workman is permanent in nature and he was doing the work of peon as well as dresser. Labour court has also appreciated the non explanation from the evidence of witness for petitioner as to why post of peon is found to be vacant in the set up right from the opening of the dispensary at Dhasa. Labour court has considered that according to the Government Resolution dated 26.12.1980, if part time employee remained in continuous service of three years then, his case should have to be considered for regularization as full time employee. In Dhasa Dispensary, post of peon in set up is found to be vacant and yet petitioner exploited work of respondent and not made him permanent but took work as a permanent employee for an indefinite period. Labour court has considered rightly the petitioner has relied upon the Circular dated 21.8.95 Exh. 26/1. Considering the Circular dated 26.12.80, labour court observed that the workman was entitled for the benefit of said Circular in the year 1991 considering the date of his entry in service in the year 1988 and, therefore, at the relevant time when the workman had become entitled

for the benefit of the Circular dated 26.12.1980, at that time, Circular dated 21.8.1995 keeping circular dated 26.12.1980 in abeyance was not in existence in 1991, then, why at the relevant time, why the case of the workman for benefit of Circular dated 26.12.1980 was not considered by petitioner and why kept it pending and why continued to exploit work from workman and such exploitation amounts to unfair labour practice. Petitioner never considered the case of workman for regularization on the basis of Circular dated 26.12.1980 and when the workman raised dispute and it was referred to for adjudication, then, raised plea that such benefit cannot be granted in view of subsequent circular dated 21.8.95. According to the labour court, such an approach of the petitioner amounts to unfair labour practice adopted by the petitioner a State authority. Legal right accrued in favour of the workman on the basis of the Govt. Circular dated 26.12.1980 in the year 1991 cannot be taken away by the petitioner by citing subsequent circular of the year 1995 dated 21.8.95 putting the said circular dated 26.12.1980 in abeyance. Therefore, legal right has been accrued

in favour of workman to become full time employee as per circular dated 26.12.1980 in the year 1991 against the post of peon found vacant in the set up at Dhasa Dispensary but he was not made regular/permanent subsequently prior to issuance of subsequent circular dated 21.8.95 and subsequently petitioner cannot be permitted to take benefit of the circular dated 21.8.95 and according to the labour court, it was amounting to unfair labour practice on the part of the petitioner which is a State Authority. Being a State Authority, it is the duty of the petitioner to act as a Model Employer by extending benefit of the Government Resolutions and Circulars immediately to its employees. It is the legal obligation on the part of the petitioner being a State Authority and the petitionr has failed to discharge such legal obligation by not regularizing the service of workman in the year 1991 or immediately thereafter and prior to issuance of subsequent circular dated 21.8.1995. No explanation was tendered by petitioner either before labour court or before this Court as to why case of respondent was not considered as per circular datd 26.12.1980 in

1991 or immediately thereafter and prior to the issuance of Circular dated 21.8.95 whereby the Circular dated 26.12.1980 was kept in abeyance. This Court is of the view that in view of such conduct of the petitioner also, petitioner cannot be permitted to take benefit of the Circular dated 21.8.1995 as it is nothing but a mere attempt to deprive the workman of his legal right accrued in his favour in the year 1991, prior to the issuance of circular dated 21.8.1995. Therefore, labour court was right in appreciating both the circular and was right in granting the benefits in favour of workman.

Labour court has also considered certain decisions cited before it by both the parties including the decision of Full Bench of this Court in case of Amreli Municipality. Labour court has, in detail, discussed each and every aspect of the matter and has given cogent and convincing reasons for the conclusions drawn by it as to why it is not agreeing with the contentions of the petitioner. Labour court has distinguished each and every decision relied upon by the petitioner and has considered hard reality

which has come on record on the basis of evidence of both the parties. Naturally, while adjudicating the reference, labour court cannot ignore hard reality coming on record on the basis of the evidence produced by both the parties.

Therefore, considering the reasoning given by the labour court based upon the oral and documentary evidence produced by both the parties before it, one fact is very much clear that from the beginning, one post of peon was vacant at Dhasa Dispensary and it was not filled in by regular process of selection and workman was admittedly working in the year 1988 and was entitled for the benefit of circular dated 26.12.1980 in the year 1991 which were not granted to him immediately or even thereafter but prior to circular dated 21.8.95 but petitioner continued workman as part time employee. These aspects have been rightly considered and appreciated by the labour court and this court is of the view that the non consideration of the case of workman by petitioner for the benefit of circular dated 26.12.1980 immediately in the year 1991 or thereafter amounts to

denial of legal right and, therefore, this court is of the view that the labour court was right in passing the award in question.

Decision in Secretary, State of Karnataka versus Umadevi and others, reported in 2006(4) SCC pag 1 cited by Mr. Shah before this Court has been considered by this Court. Decision is dated 10.4.2006. In the said decision, award passed by the labour court/industrial tribunal under the provisions of the ID Act, 1947 were not under challenge but order passed by the High Court granting benefit of regularization were under challenge. However, in the facts of this case, powers of the labour court and industrial tribunal under the provisions of the ID Act, 1947 are altogether different and, therefore, this decision is not applicable to the facts of this case. Further, Larger Bench of the Apex court has also made it clear that whatever order of regularization has been passed before the date of said judgment, normally should not have to be reopened and, therefore, considering aforesaid two aspects of the matter, aforesaid decision of the apex

court is not applicable to the facts of this case.

Labour Courts and industrial Tribunals constituted under the ID Act, 1947 are having very wide powers to create new conditions of service or to impose new terms and conditions of service against the employer. This aspect has been considered by the Division Bench of this in **Gujarat Electricity Board versus Gujarat Electricity Employees Union reported in 1993 (1) GLH 656.** Relevant discussion in respect of the powers and jurisdiction of the labour court/industrial tribunal. Relvant discussion made in paragraph 19, 20 and 21 by the Division Bench of this court is reproduced under:

> “19. He in the first instance referred to the decision of the Supreme Court contained in the case of Co-operative Central Bank Limited v. Additional Industrial Tribunal,Andhra Pradesh, Hyderabad reported in AIR 1970 SC SC p. 245. Following observations in para 10 are pressed into service:
> 'In a number of cses, conditions of service for industries are laid down by Standing Orders certified under the

Industrial Employment (Standing Orders) Act, 1946, and it has been held that though such Standing Orders are binding between the employer and employees of the industries governed by these Standing Orders they do not have such force of law as to be binding to IndustrialTribunal adjudicating an industrial dispute. The jurisdiction which is granted to the Industrial Tribunal by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have right even to vary the contract of service between the employer and employes...'

It is no doubt true that the Supreme Court was concerned with the bye laws framed in pursuance of Andhra Pradesh Cooperative Societies Act (N.7) of 1964 by the concerned co-operative society. At the same time, the true field of the IndustrialDIsputes Act had also been highlighted by the Supreme Court.

20. Mr. Shahani also relied upon two decisions `of this Court. First one is in Special Civil Application No. 351 of 1976 decided on 26.4.1976 by the

Division Bench consisting of J.B.Mehta & T.U.Mehta,JJ. In that case, petitioner Savarkundla Municipality challenged the award of Industrial Tribunal as regards Harijan Safai Kamdars in respect of certain demands which were allowed by the Tribunal. The award was challenged inter alia on the ground of want of jurisdiction on the part of the tribunal to make such an award in excess of the demand and in view of the provisions of section 271 of the Gujarat Municipalities Act, 1963. Section 271 of the Act provides that Municipality shall make rules not inconsistent with the Act and the rules or orders made by the State Government under hat Act and may from time to time alter or rescind them.The proviso to section 272 of the said Act enacts that no rule shall have effect unless and until it has been approved by the State Government. Section 273 (2) provides that notwithstanding anything contained in clause (a) of the proviso to section 271 or in sub section (1) of this section, a municipality shall have power to make without sanction a rule under clause (d) of section 271 in respect of various matters enumerated therein.

The argument was that because of such statutory provisions, the Industrial Tribunal did not have jurisdiction to make an award in excess of the demand and in view of the provisions of section 271 of the Gujarat Municipalities Act, 1963. The Division Bench laid down the following principle :

> 'These provisions of the Municipal Act operate in a totally different field when the Municipality as an employer unilaterally wants to lay down the service conditions of its employee. Those provisions would have no operation where the industrial adjudication arises under a reference made by the Government under the Industrial Disputes Act, 1947, where on such an industrial dispute the Tribunal has jurisdiction to revise the old service conditions, statutory or otherwise, and to make new service contracts for the benefits of the employees in so far as it is just and proper for the industry and it must resolve such an industrial dispute. Therefore, the industrial adjudication always operates in this special field and accordingly

when such service conditions are altered by a legal industrial settlement or award, in those cases the provision of the Municipal Act which provide for voluntary fixation or alteration of the service conditions at the instance of the employer would not be applicable. That is why when the Government published such an industrial award, it becomes binding on the Municipality under section 17(A) and it would never be a defence to the Municipality that it will not implement such a binding legal award once it has been duly published and has become enforceable under the Industrial Disputes Act. It is only because the employer is not willing to alter his service rules that an industrial adjudication intervenes and settle this question on a properly raised industrial dispute between the two parties - - employer and the workmen. *Therefore, in this field of industrial adjudication it is the industrial award which would be legally binding and the employer could not contend that it has its*

difficulties under the Municipal law, which would only apply where the Municipality on its own without any industrial settlement or adjudication by the Tribunal unilaterally wants to change its service conditions by framing proper rules under that law.'[emphasis supplied.

21. The second one is Special Civil Application NO. 1856 of 1975 decided on July 27, 28, 1976. In that case the Division Bench consisting of S. Obul Reddi, CJ and PD Desai,J. Examining the scheme of the State Bank of India Act, 1955 particularly of the provision contained in section 50 thereof and after stating the history of the adjudication of the industrial disputes, proceeded to consider the preliminary contentions urged on behalf of the employer against the maintainability of an application u/S. 33-C of the Industrial Disputes Act, 1947. The second preliminary objection was thus stated : the principal question which fell for the determination was whether the statutory regulation which defines the expression substantive salary or the relevant terms of the agreement dated

March 31 1967 prevailed in the matter of calculation of pension and that such a dispute could not possibly be resolved in a proceeding u/S. 33-C (2) of the Industrial Disputes Act. Following observations appearing at pages 24 and 25 will be useful for the purpose of considering the broad submission canvassed by Mr. Shahani.

"The further question, namely, whether the binding agreement would prevail or the statutory regulation would prevail is also an incidental question and that too the Labour Court will have to d ecide as an incidental question. If the statutory regulation would be enforceable and would be in a sense nullity."

It was therefore held that such a question would always be decided by Labour Court in a proceeding under section 33C(2) of the Industrial Disputes Act.In the above connection Mr. Adhvaryu learned Advocate for theBoard relied upon the decision of Karnataka High Court in case of the Corpration of the City of Mangalore and Another v. M.S.Giri and Another reported in 76 FJR at page 389. In that case the workmen of the Mangalore City Municipality raised an industrial

dispute for raising the age of superannuation from 55 to 58 years. Agreement was entered into between the workmen represented by their union and the management of the Municipality represented by its Commissioner. The dispute was referred to the sole Arbitrator u/S. 10-A of the Industrial Disputes Act. The Municipality then the Corporation contested that matter and challenged the resultant award raising the retirement age from 55 to 58 years. It has been held by the Karnataka High Court that as the age of retirement was fixed at 55 years under rule 14 of the Municipal rules framed under the then Madras District, the Municipalities Act, the reference was not competent and that the statutory rule could not be modified by an award of an Arbitrator since the statutory provisions operated as a bar for the invocation of the Industrial Disputes Act. We have gone through the various decisions which were pressed into service for coming to the aforesaid conclusion. However, distinction between the special legislation and a general legislation as has been highlighted in the case of UP State Electricity Board v. Hari

> Shankar (Supra) itself would clinch the issue and from that point of view, the authorities relied upon by the Karnataka High Court would not be applicable. In fact the aforesaid view of the Karnataka High Court runs counter to the view expressed by the Supreme Court in the case of UP State Electricity Bard v. Hari Shankar (supra). With respect, we are unable to agree with the view of the Karnataka High Court and find that the contrary view of this court in the aforesaid two decisions rightly holds the field being based on settled legal position flowing from the relevant decision of the Supreme Court on the point. It should be borne in mind that the basic distinction is between the individual dispute in the face of a statutory regulation governing the workman individually and a general dispute raised by the body of the workmen and ultimately through the statutory process referred for adjudication."

Division Bench of Andhra Pradesh High Court, in **Indian Banks Association And Workmen of Syndicate Bank & Ors., reported in 1998 (1) LLJ 233** considered

about the jurisdiction of labour courts/industrial tribunal. Relevant observations made in para 8 of said decision are reproduced as under:

> “8. The next question of the reference being bad as in the guise of a reference the respondents were claiming modification of the terms of the agreement is also misconceived It is well known as a part of the jurisprudence applicable to the industrial law, that Industrial Tribunals are vested with the jurisdiction of also modifying the contract of service and in the process may entitle the workmen to better rights and facilities. The question was considered by the Apex Court in Cooperative Central Bank Ltd. v. Additional Industrial Tribunal, AP AIR 1970 SC 245 with the observation : “ The jurisdiction which is granted to Industrial Tribunal by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can

> never be exercised by a civil court or a Registrar acting under the Cooperative Societies Act, so that the circumstance that in granting relief on issue NO.1, the Tribunal will have to vary the special bye laws framed by the Cooperative Bank does not lead to the inference that the Tribunal would be incompetent to grant the reliefs sought in its reference. In fact, the reliefs could only be granted by the Industrial Tribunal and could not fall within the scope of the powers of the Registrar dealing with a dispute under section 61 of the Act.”

Therefore, in view of the observations made by the Division Bench of this Court wherein the Division Bench of this Court has relied upon the earlier decision of Division Bench of this court as well as the decision of the Division Bench of the Andhra Pradesh as aforesaid, industrial tribunals/labour courts are having wide powers and jurisdiction under the Industrial Law and in exercise of such powers and jurisdiction, industrial tribunals/labour courts can vary contract of service

or pass an order for better conditions of service not confined to existing conditions of service applicable to workmen.

As regards contention of the learned advocate Mr. Shah that the respondent workman was not appointed as per the procedure of recruitment rules and therefore, labour court ought not to have passed the award in question, considering the undisputed facts on record, this court is of the view that the labour court has rightly granted benefits in favour of workman because at Dhasa Dispensary post of peon was found tobe vacant as per the evidence of the witness for the petitioner itself from the very beginning and against that post, respondent workman was appointed as part time employee, completed continuous service of three years and covered by the circular dated 26.12.1980 and yet he was not given benefit of said circular by the petitioner and, therefore, ultimately industrial dispute was raised by the workman wherein labour court granted same benefit which ought to have been granted by petitioner on the basis of Govt. Circular dated

26.12.1980. Legal right accrued in favour of the workman on the basis of Circular dated 26.12.1980 in view of his continuous service of three years cannot be nullified on the basis of subsequent circular dated 21.8.1995 and the labour court was right in considering and appreciating that aspect of the matter and in doing so, no jurisdictional error has been committed by the labour court. Labour Court has not exceeded jurisdiction while granting benefit in favour of the workman. Mr. Shah, learned Advocate for the petitioner has not been able to point out any infirmity in the impugned award. He has also not been able to point out that the findings recorded and conclusions drawn by labour court are contrary to record and, therefore, according to my opinion, no interference is warranted in exercise of the powers under Article 227 of the Constitution of India because this court cannot interfere with such findings of fact nor can it reappreciate the evidence which was once appreciated by the labour court. This court also cannot act as an appellate court and cannot take another view in the matter.

This aspect has been considered by the apex court in **Laxmikant Revchand Bhojwani and another versus Pratapsing Mohansingh Pardeshi, reported in (1995) 6 SCC 576.** Relevant observations made by the apex court in para 9 of the said judgment are therefore reproduced as under:

> “The High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes. “

In **Ouseph Mathai and Others versus M. Abdul Khadir, reported in (2002) 1 SCC 319,** the apex court observed as under in para 4 and 5 :

> “It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and

tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In **Waryam Singh v. Amarnath (1954 SCR 565)** this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the

bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bose v. Commr. of Hills Division (1958 SCR 1240). In Bhahutmal Raichand Oswal v. Laxmibai R. Tarta (AIR 1975 SC 1297) this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the Legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R v. Northumber Compensation Appeal Tribunal, Exparte Shaw (1952 (1) All ER 122, 128) this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Gurnam held : (SCC p.460 para 20)

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down

reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Teland 1977 (2) SCC 437). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

In **Roshan Deen versus Preeti Lal, reported in (2002) 1 SCC 100**, the apex court observed as under in

paragraph 12:

> “We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of UP v. District Judge, Unnao [(1984) 2 SCC 673: AIR 1984 SC 1401]). The very purpose of such constitutional powers being conferred on the High Court is that no man should be subjected to injustice by violating the

> law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-produce of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law."

Further, considering the ultimate relief granted by the labour court, it is clear that the labour court has not granted the relief from the date on which workman completed three years service as part time but has passed just, reasonable and balanced award since it has directed that the workman is entitled for notional benefit from 1991 to 1998and not entitled for any amount of arrears of difference of salary and other benefits and has clarified that the workman is entitled for such benefit only with effect from 3.8.1998 and, therefore, considering this aspect of the matter, labour court has passed just, balanced and reasonable award and, theefore, there is no substance in this petition and the same is

required to be dismissed.

For the reasons recorded hereinabove, this petition is dismissed. Notice is discharged. No order as to costs.

(H.K. Rathod,J.)

Vyas